

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

EUGENE SCALIA, SECRETARY OF
LABOR, UNITED STATES
DEPARTMENT OF LABOR,

Plaintiff,

v.

SOUTHERN BRICK CONTRACTORS,
INC.; SOUTHERN BRICK
CONTRACTORS, INC. 401(k) PLAN; and
ESTATE OF STEPHEN H. CATLETT,

Defendant(s).

CIVIL ACTION NO. 3:20cv875

COMPLAINT

Eugene Scalia, Secretary of Labor (the “Secretary”), hereby alleges:

Jurisdiction and Venue

1. This action arises under the Employee Retirement Income Security Act of 1974 (“ERISA” or “the Act”), 29 U.S.C. § 1001, *et seq.*, and is brought to obtain relief under Sections 409 and 502 of ERISA, 29 U.S.C. §§ 1109 and 1132, in the form of equitable remedies that will redress violations, obtain appropriate equitable relief for breaches of fiduciary duty under ERISA § 409, 29 U.S.C. § 1109, and obtain such further equitable relief as may be appropriate to enforce the provisions of Title I of ERISA.
2. This Court has subject matter jurisdiction over this action pursuant to Section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1).
3. Southern Brick Contractors, Inc. 401(k) Plan (“the Plan”) is an employee benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3), and is, therefore,

subject to the coverage of the Act pursuant to Section 4(a) of ERISA, 29 U.S.C. § 1003(a).

4. Southern Brick Contractors, Inc., a Virginia corporation, is the Administrator and Sponsor of the Plan. Southern Brick Contractors, Inc.'s last place of business was located in Richmond, Virginia.
5. Venue with respect to this action lies in the Eastern District of Virginia, pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

The Parties

6. The Secretary, pursuant to Sections 502(a)(2) and (5) of the Act, 29 U.S.C. §§ 1132(a)(2) and (5), has the authority to enforce the provisions of Title I of ERISA by, among other means, the filing and prosecution of claims against fiduciaries and others who commit violations of ERISA.
7. Southern Brick Contractors, Inc. is the Plan Sponsor and Administrator of the Plan. At all relevant times, Southern Brick Contractors, Inc. has exercised discretionary authority or discretionary control respecting management of the Plan, has exercised authority or control respecting management or disposition of the Plan's assets, and has discretionary authority or discretionary responsibility in the administration of the Plan. Southern Brick Contractors, Inc. is therefore a fiduciary of the Plan within the meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21), and a party-in-interest as that term is defined in Sections 3(14)(A) and (C) of ERISA, 29 U.S.C. §§ 1002(14)(A) and (C). Southern Brick Contractors, Inc. sold its assets to Southern Brick, LLC in 2015, but it remained a going concern thereafter to wind up its affairs. The Virginia State Corporation Commission

changed Southern Brick Contractors, Inc.'s status to "inactive" on May 31, 2016 for failure to pay annual fees and file an annual report.

8. At all relevant times, Stephen H. Catlett ("Catlett") was the sole shareholder, owner, and registered agent of Southern Brick Contractors, Inc. and Trustee of the Plan. At all relevant times, Catlett exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and had discretionary authority or discretionary responsibility in the administration of the Plan. Catlett was therefore a fiduciary of the Plan within the meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21), and a party-in-interest as that term is defined in Sections 3(14) (A) and (E) of ERISA, 29 U.S.C. §§ 1002(14) (A) and (E). Catlett died on February 15, 2019, and his shares and ownership interest in Southern Brick Contractors, Inc. passed to his estate.
9. Estate of Stephen H. Catlett ("Estate") is the successor in interest to Southern Brick Contractors, Inc. and now holds an undivided 100% interest in Southern Brick Contractors, Inc. following the death of Stephen H. Catlett. The Estate also has physical possession of certain stock certificates representing shares of Helix BioMedix, Inc. that Catlett previously sold to the Plan. It is undisputed that the shares are Plan assets.
10. The Plan is joined as a party defendant pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

General Allegations

11. On or about February 25, 2009, Southern Brick Contractors, Inc. established the Plan to provide benefits to its employees in the event of retirement, death or disability and upon termination of employment.
12. Since 2016, when Southern Brick Contractors, Inc. ceased operations and contributions to the plan ceased, Southern Brick Contractors, Inc. and Catlett did not take fiduciary responsibility for the operation and administration of the Plan and its assets, nor did they appoint anyone to assume said responsibility following Catlett's death.
13. Under the terms of the Plan, Plan participants are entitled to all distributions when the Plan is terminated, partially terminated, or there is a complete discontinuance of contributions to the Plan.
14. Plan participants were terminated from the company in 2015 when the company's assets were sold, but those participants have not been able to obtain a distribution from the Plan because fiduciaries, Southern Brick Contractors, Inc. and Catlett, did not initiate termination of the Plan or distribution of the assets.
15. As of June 30, 2018, the Plan had fifty-two (52) participants and \$63,508.87 in Plan assets.
16. From 2015 until his death on February 15, 2019, Catlett did not fulfill his obligations as a fiduciary including but not limited to failing to manage and distribute the assets of the plan, which were \$63,508.87 as of June 30, 2018, to each of the fifty-two (52) participants. Catlett also failed to approve required distribution paperwork and process

distribution requests. In addition, no trustee was appointed in his stead, and no trustee took his place upon Catlett's death.

Violations

17. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts by reference the averments and allegations of paragraphs 1-16, inclusive.
18. By the actions and conduct described above, defendants Southern Brick Contractors, Inc. and Catlett, as a fiduciaries of the Plan,
 - a. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and its beneficiaries and defraying reasonable expenses of administering the Plan, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A); and
 - b. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

Prayer for Relief

WHEREFORE, the Secretary prays that this Court enter an Order:

- A. Removing defendant Southern Brick Contractors, Inc. from its position as Plan Administrator, and appointing an independent fiduciary to administer the Plan in order to

effectuate its termination and the collection and distribution of Plan assets to the participants and beneficiaries; and

B. Ordering such further relief as is appropriate and just.

Respectfully Submitted,

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